UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

COUNCIL OF CHAPTERS OF AAUP at UNIVERSITY OF MEDICINE AND DENTISTRY OF NEW JERSEY

Employer

and

Case 22-RC-13014

TEAMSTERS UNION LOCAL NO. 115 INTERNATIONAL BROTHERHOOD OF TEAMSTERS

Petitioner

DECISION ON REVIEW

On July 21, 2009, the Board granted the Employer's Request for Review of the Regional Director's Decision and Direction of Election. Having carefully reviewed the entire record and the briefs on review, we affirm the Regional Director's finding that senior staff representative Amy Reeder is <u>not</u> a confidential employee, for the reasons set forth by the Regional Director. See *Bakersfield Californian*, 316 NLRB 1211, 1212 (1995); *The Washington Post Co.*, 254 NLRB 168, 197 (1981). We find, contrary to the

In affirming the Regional Director's finding that Reeder is <u>not</u> a confidential employee, we find that the record fails to establish that Reeder is privy to the Employer's outer cost limits on wage rates or other bargaining proposals by virtue of her position in preparing the budget. To the extent that the Employer contends that Reeder is a confidential employee because of her personnel functions and her role in the hiring process, the record fails to establish that due to these functions Reeder regularly has access to confidential information that could, if prematurely disclosed to the Union, prejudice the Employer's bargaining strategy in future negotiations. We further find it unnecessary to rely on the Regional Director's reasoning to the extent that he suggests that Reeder is not a confidential employee because all employees have access to the same information. Nor do we rely on the Regional Director's reasoning that "[t]he evidence failed to establish that it would be impossible or even difficult for Reeder to be excluded from the

mechanical calculation of those figures [regarding anticipated and discretionary labor costs of the staff] in

the final budget if the Employer so desired."

Member Schaumber disagrees with Bakersfield Californian, supra at 1212, in which the Board found that an employee who had access to the employer's budgetary process, including projected employee salaries, was not a confidential employee because "merely having access to confidential information does not establish confidential status." In his view, that assertion goes too far; access to confidential financial information, such as revenue, budget projections, and labor costs, may well present an untenable conflict of interest in a given case. Here, for example, Reeder has access to all of the Employer's financial information, including information about projected salary increases and merit pay. Member Schaumber agrees with the Second Circuit's position that "information [of this type], in the hands of the Union, would give it a significant strategic advantage in negotiations." See NLRB v. Meenan Oil Co., 139 F.3d 311, 318 (2nd Cir. 1998) (finding that two employees who assisted in preparing the company's annual profit plan, which included projected wage and salary data, were confidential employees). Nonetheless, Member Schaumber acknowledges that Bakersfield Californian is extant Board law, which he applies for institutional reasons. Pursuant to that precedent, he agrees that Reeder is not a confidential employee.

Regional Director, that administrative assistant Vatrice George is a confidential employee.²

Preliminarily, we find that Employer's Executive Director Alex Bernstein formulates, determines, and effectuates labor relations policies based on his responsibility for the management of the staff and day-to-day operations, his function recommending personnel actions concerning these employees to the Council and "developing rules with the staff with respect to our operation," and his work with the Council president, vice-president, and other members in formulating a position concerning the RC petition. The Employer asserts that Bernstein will be the employer representative for dealing with the staff union--a responsibility consistent with his management functions as well as his role in negotiating and administering the contracts between the Employer and the University. See Southern Maryland Electric Corp., 220 NLRB 979, 980-981 (1975); Moore-McCormick Lines, Inc., 181 NLRB 510, 512 (1970).

Administrative assistant Vatrice George assists and acts in a confidential capacity to Bernstein. George is Bernstein's "right hand" assistant with respect to the day-to-day operations of the office. Among other functions, she opens mail and reviews and edits Bernstein's correspondence, including correspondence related to the Petitioner and to the Employer's position with respect to the petition. George functions as Bernstein's only assistant, and if she were to be found not to be a confidential employee, Bernstein would not have access to a non-unit assistant to provide clerical assistance with respect to his confidential union-related business. In situations where an employer would otherwise not have the assistance of an employee not represented by the union to perform confidential work for a person who formulates, determines, and effectuates an employer's labor

² Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act. See Snell Island SNF LLC v. NLRB, 568 F.3d 410 (2d Cir. 2009), petition for cert. filed 78 U.S.L.W. 3130 (U.S. September 11, 2009) (No. 09-328); New Process Steel v. NLRB, 564 F.3d 840 (7th Cir. 2009), petition for cert. filed 77 U.S.L.W. 3670 (U.S. May 22, 2009) (No. 08-1457); Northeastern Land Services v. NLRB, 560 F.3d 36 (1st Cir. 2009), petition for cert. filed 78 U.S.L.W. 3098 (U.S. August 18, 2009) (No. 09-213). But see Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB, 564 F.3d 469 (D.C. Cir. 2009), petition for cert. filed sub nom. NLRB v. Laurel Baye Healthcare of Lake Lanier, Inc., U.S.L.W. (U.S. September 29, 2009)(No. 09-377).

³ George also takes calls from Council members; files documents; takes minutes and transcribes minutes of Council, Board of Governors, and Executive Committee meetings; puts packets of materials together for meetings; and is being trained by Reeder in matters of budget, payroll, accounts payable, and finance.

⁴ After the filing of the petition, Bernstein asked George to organize a conference call with Council president Dr. Lepore, vice-president Dr. Kumar, and other Council members, to discuss the Employer's position in response to the petition. George did not participate on the call and did not type notes concerning the call. However, following the call, Bernstein drafted a letter to the Petitioner for Drs. Lepore and Kumar to sign, asserting that the three employees sought by the Petitioner are confidential employees. He then asked George to review the letter and confirm the agreement of Drs. Lepore and Kumar to its terms, and to sign the letter on their behalf. George subsequently signed and initialed the letter.

relations policies, the Board has generally conferred confidential status. See *Reymond Baking Co.*, 249 NLRB 1100 (1980).

Accordingly, this proceeding is remanded to the Regional Director for further appropriate action.

WILMA B. LIEBMAN, CHAIRMAN

PETER C. SCHAUMBER, MEMBER

Dated, Washington, D.C., October 23, 2009.